

Strasburger

ATTORNEYS AT LAW

August 30, 2012

FILED

AUG 30 2012

JOHN D. HEFFNER

Direct Fax 202-742-8607

Direct Phone 202-742-8607

Email: john.heffner@strasburger.com

**SURFACE
TRANSPORTATION BOARD**

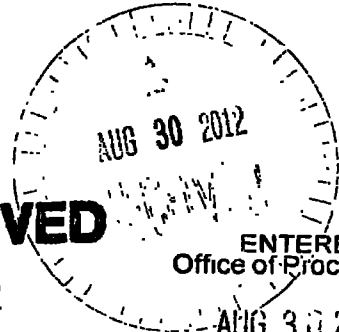
VIA HAND DELIVERY

Ms. Cynthia A. Brown,
Chief, Administration
Office of Proceedings
Surface Transportation Board
395 D Street, S.W.
Washington, D.C. 20423-0001

FEE RECEIVED

AUG 30 2012

**SURFACE
TRANSPORTATION BOARD**



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Office of Proceedings

AUG 30 2012

Part of
Public Record

**RE: FD 35668, Iowa Pacific Holdings, LLC And Permian Basin Railways –
Continuance In Control Exemption – Rusk, Palestine & Pacific
Railroad, LLC**

**FD 35669, Rusk, Palestine & Pacific Railroad, LLC – Operation
Exemption – Texas State Railroad Authority**

Dear Ms. Brown:

On behalf of Iowa Pacific Holdings, LLC, Permian Basin Railways, and Rusk Palestine & Pacific Railroad, LLC, I am enclosing the following documents for filing:

- (1) In FD 35668, an original and ten copies of a verified notice of exemption under 49 CFR 1180.2(d)(7) for Iowa Pacific Holdings, LLC, to continue in control of Rusk, Palestine & Pacific Railroad, LLC, a noncarrier, and Permian Basin Railways, a noncarrier intermediate holding company that in turn controls a series of class III short line railroad common carriers; and

Strasburger & Price, LLP

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Austin | Collin County | Dallas | Houston | San Antonio | New York, N.Y. | Washington, D.C. | Mexico City - Strasburger & Price, SC
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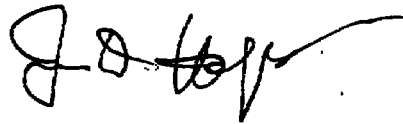
August 30, 2012

Page 2

- (2) In FD 35669, an original and ten copies of a verified notice of exemption under 49 CFR §1150.31 for Rusk, Palestine & Pacific Railroad, LLC, a noncarrier, to initiate operations over a private railroad owned by the Texas Parks & Wildlife Authority and leased to the Texas State Railroad Authority.

I am enclosing a corrected word copy of this filing on a computer disk as well as a filing fee check for \$3100 payable to the Board. Please date-stamp and return one copy of this filing.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner

Enclosures

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35669

232893



**RUSK, PALESTINE & PACIFIC RAILROAD, LLC
—OPERATION EXEMPTION—
TEXAS STATE RAILROAD AUTHORITY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

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Submitted By:

**John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607**

Counsel for Petitioner

**ENTERED
Office of Proceedings**

AUG 30 2012

**Part of
Public Record**

Dated: August 30, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35669

**RUSK, PALESTINE & PACIFIC RAILROAD, LLC
—OPERATION EXEMPTION—
TEXAS STATE RAILROAD AUTHORITY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Rusk, Palestine & Pacific Railroad, LLC (“RP&P”), a noncarrier subsidiary of short line holding company Iowa Pacific Holdings, LLC (“IPH”), files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”). RP&P seeks Board authorization to operate as a common carrier railroad over about 27 miles of railroad (“the Line”) between Rusk and Palestine, TX. The Line is currently owned by the Texas Parks and Wildlife Authority and leased to the Texas State Railroad Authority (“the Rail Authority”) and is currently operated by RP&P as a noncommon carrier intrastate excursion passenger railroad using the name Texas State Railroad. Neither RP&P nor the Rail Authority presently provides any common carrier freight railroad service over the Line. There are no current mileposts on the Line. In addition, RP&P seeks incidental

trackage rights for the purpose of interchange only over about 1.3 miles of track owned and operated by the Union Pacific Railroad Company (“UP”) between a point where the Line connects with UP and UP’s yard located in Palestine, TX.

INFORMATION REQUIRED BY 49 CFR §1150.31

| | |
|---|---------------------------|
| <u>Name and Address of Applicant</u> | 49 CFR §1150.33(a) |
| Rusk, Palestine & Pacific Railroad, LLC | |
| 118 South Clinton Street, | |
| Suite 400 | |
| Chicago, IL 60661 | |

| | |
|-----------------------------------|---------------------------|
| <u>Applicant's Representative</u> | 49 CFR §1150.33(b) |
| John D. Heffner | |
| Strasburger & Price, LLP | |
| 1700 K Street, N.W. | |
| Suite 640 | |
| Washington, D.C. 20006 | |
| (202) 742-8607 | |

| | |
|-------------------------------|---------------------------|
| <u>Statement of Agreement</u> | 49 CFR §1150.33(c) |
|-------------------------------|---------------------------|

On August 6, 2012, IPH acquired the entire ownership interest in American Heritage Railways of Texas, LLC (“American”), an entity that has been operating a noncommon carrier intrastate excursion passenger railroad over the Line using

the name Texas State Railroad since 2007.¹ Upon acquisition, IPH changed American's name to RP&P. American has been and RP&P will continue providing that excursion passenger railroad service over the Line as the Texas State Railroad pursuant to an eight year Railroad Operating Agreement executed on August 31, 2007, with an August 31, 2015, expiration date. In addition, access to the property by American, and now by RP&P, is pursuant to a sublease with the Rail Authority executed on August 31, 2007, with an August 31, 2016, expiration date.

Operator of the Property

49 CFR §1150.33(d)

As noted above, RP&P will provide all common carrier railroad service over the Line using the name "Rusk, Palestine & Pacific Railroad" once this notice becomes effective.

Brief Summary of Transaction

49 CFR §1150.33(e)

American is a noncarrier that was formed for the purpose of operating an intrastate excursion passenger railroad using the name Texas State Railroad over trackage owned by the Texas Parks & Wildlife Authority and leased to the Rail Authority. Because this trackage is currently disconnected from the national

¹ Because American was not a common carrier railroad subject to the Board's jurisdiction, there was no need for IPH to obtain authority to acquire the ownership interest.

railroad system, it is exempt from this Board's jurisdiction and IPH's acquisition of American is also outside the Board's jurisdiction. Upon acquisition, IPH changed American's name to RP&P.

RP&P believes that the Line may have been constructed as a common carrier railroad under the names Texas & Northeastern Railway and/or Texas State Railroad. At times the Line or portions of the Line have been leased to and operated by either the Missouri Pacific Railroad or a subsidiary of the Southern Pacific Railroad, the St. Louis Southwestern Railway commonly known as the "Cotton Belt Railroad." RP&P further believes that each of these two class I railroads obtained authority from the former Interstate Commerce Commission to terminate their operations over the Line; however, the records of those discontinuances appear to have been destroyed. More recently, the Parks Authority acquired the Line, leased it to the Rail Authority, and the Rail Authority entered into an Agreement with American to operate it as an intrastate excursion passenger railroad using the name Texas State Railroad. RP&P will continue to operate that passenger service using the name "Texas State Railroad."

Because RP&P believes the Line has potential for freight service, it acquired the entire ownership interest in American. It is filing this exemption notice to provide common carrier freight railroad service over the Line. RP&P will provide

common carrier railroad service over the Line using the name “Rusk, Palestine & Pacific Railroad.” RP&P notes that the Board has previously exempted transactions such as this one involving the initiation of common carrier freight railroad service on lines previously used for excursion passenger railroad service. See, Midwest Rail d/b/a Toledo, Lake Erie and Western Railway—Lease and Operation Exemption—Toledo, Lake Erie and Western Railway and Museum, Inc., FD 35555, STB served October 14, 2012 (where the Board exempted the operation of a new common carrier short line railroad on trackage heretofore used for excursion railroad service).² The Rail Authority supports RP&P’s efforts to operate this trackage as shown by the resolution attached as Exhibit D. As noted above, RP&P seeks incidental trackage rights for the purpose of interchange only over a line owned by UP between the connection with UP and the Line and UP’s yard in Palestine, TX, a distance of about 1.3 miles.

Other information required

(1) The name and address of the party transferring the subject property:

² There and in some subsequent cases the Board has required applicants to furnish a copy of the pertinent operating agreement as part of their filing to show that the owner cannot exert control over the tenant carrier’s operations. A copy of the current operating agreement between American and the Rail Authority is furnished as Exhibit E to this filing.

No physical property will be transferred as a result of this filing; only operating rights will be granted to the operator.

The name and address of the Rail Authority is:

Texas State Railroad Authority
504 N Queen St,
Palestine, TX 75801

(2) The proposed time schedule for consummation of the transaction:

RP&P intends to consummate this transaction at least 30 days from the effective date of this notice, probably on or about September 30, 2012.

The mileposts of the subject property, including any branch lines:

There are no current mileposts on the Line.

The total route miles to be operated:

About 27 miles of railroad and about 1.3 miles of incidental trackage rights.

Map **49 CFR §1150.33(f)**

A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification **49 §CFR 1150.33(g)**

RP&P certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR §1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments 49 CFR §1150.33(h)

Not applicable. There are no agreements applicable to the Line imposing any interchange commitments.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. §10901.

Caption Summary 49 CFR §1150.34

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Related transaction


Concurrently with this filing, RP&P's corporate parent, IPH, is submitting a verified Notice of Exemption for its continuance-in-control of RP&P. That notice has been assigned docket number FD 35668.

Environmental and Historic Preservation Data 49 CFR §1105

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR §1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

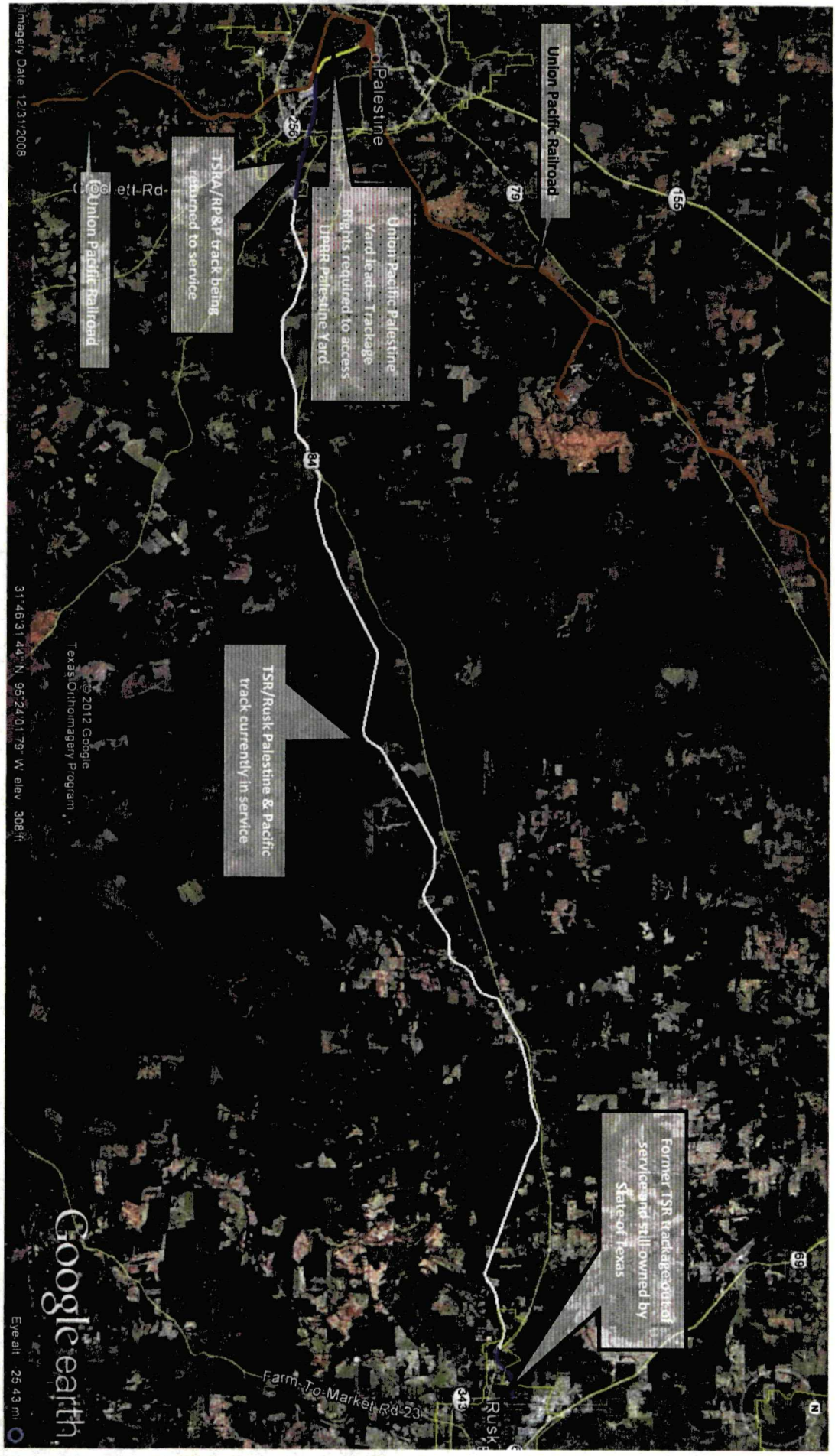
Submitted By:


John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

Dated: August 31, 2012

EXHIBIT A



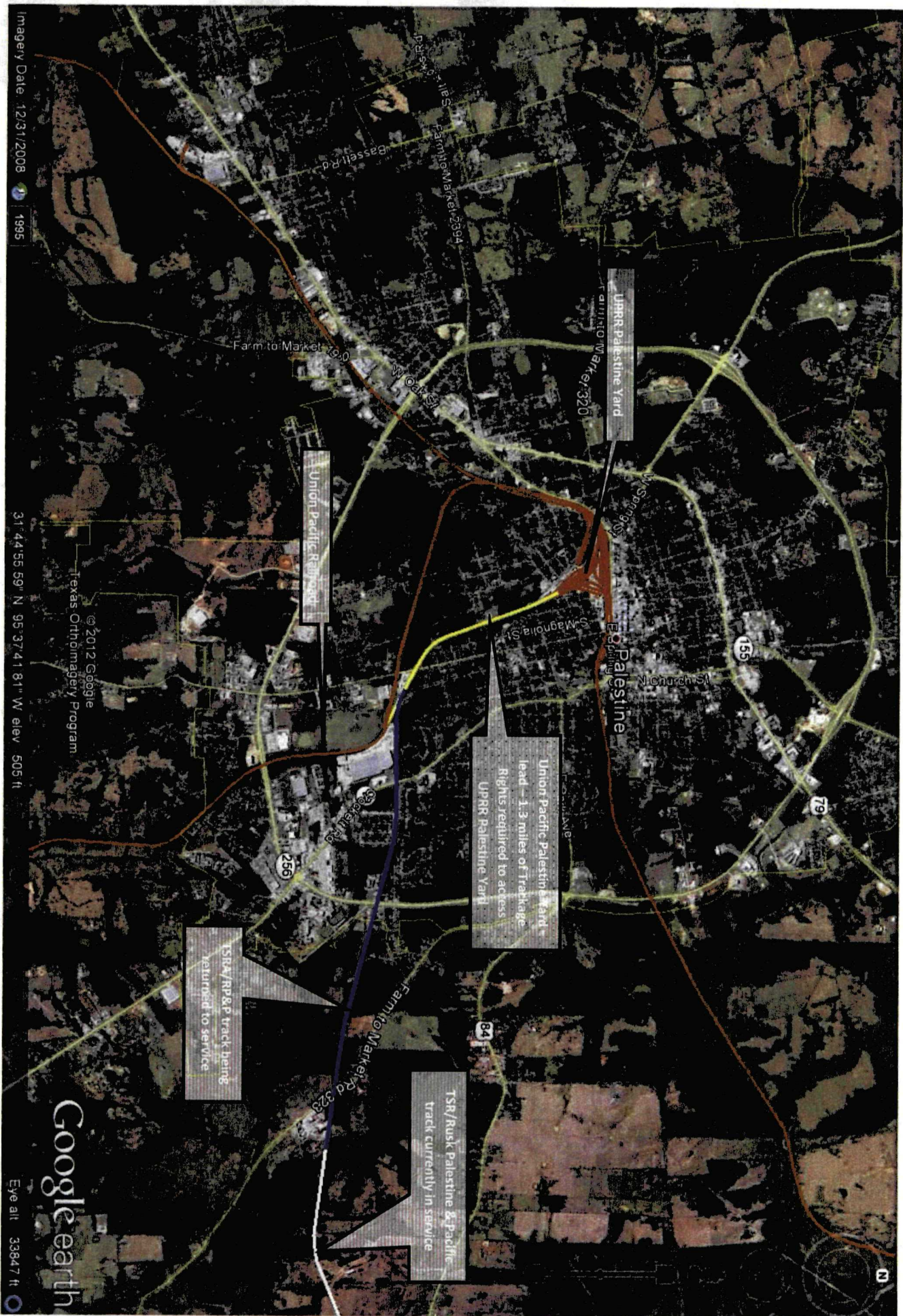
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31°46'31.44" N 95°24'01.79" W elev: 308 ft

© 2012 Google
Texas Orthomage Program

Google earth

Eye alt: 25.43 m



Imagery Date 12/31/2008 1995

© 2012 Google
Texas Orthoimagery Program
31°44'55.59" N 96°37'41.81" W elev 505 ft

Google earth

Eye alt 33847 ft

Exhibit B

Certification

I, Kevin W. Busath, certify that I am vice president – strategic planning of Rusk, Palestine and Pacific Railroad and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: August 30, 2012

Signature

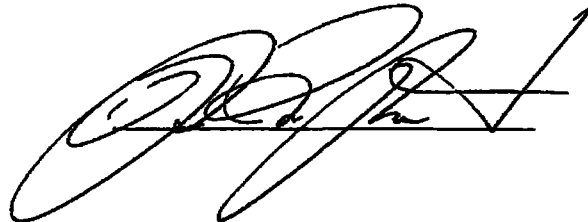
A handwritten signature in black ink, appearing to read 'Kevin W. Busath', written over a horizontal line.

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35669

**RUSK, PALESTINE & PACIFIC RAILROAD, LLC
—OPERATION EXEMPTION—
TEXAS STATE RAILROAD AUTHORITY**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10901 and 49 CFR §1150.31**

Rusk, Palestine & Pacific Railroad, LLC (“RP&P”), a noncarrier subsidiary of short line holding company Iowa Pacific Holdings, LLC (“IPH”), files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (“the Board”). RP&P seeks Board authorization to operate as a common carrier railroad about 27 miles of railroad (“the Line”) between Rusk and Palestine, TX. The Line is currently owned by the Texas Parks and Wildlife Authority and leased to the Texas State Railroad Authority (“the Rail Authority”) and is currently operated by RP&P as a noncommon carrier intrastate excursion passenger railroad using the name Texas State Railroad. RP&P will provide that common carrier freight service using the

name "Rusk, Palestine & Pacific Railroad." Neither RP&P nor the Rail Authority currently provides any common carrier freight railroad service over the Line.

There are no current mileposts on the Line. In addition, RP&P seeks incidental trackage rights for the purpose of interchange only over about 1.3 miles of track owned and operated by the Union Pacific Railroad Company ("UP") between a point where the Line connects with UP and UP's yard located in Palestine, TX.

RP&P certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

Concurrently with this filing, RP&P's corporate parent, IPH, is submitting a verified Notice of Exemption for continuance-in-control of RP&P by IPH. That notice has been assigned docket number FD 35668.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September __, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35669, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D.

**Heffner, Esq., Strasburger & Price, 1700 K Street, N.W. – Suite 640, Washington,
D.C. 20006, Telephone: (202) 742-8607, counsel for RP&P.**

**Board decisions and notices are available on our website at
WWW.STB.DOT.GOV.**

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

EXHIBIT D

MINUTES
TEXAS STATE RAILROAD AUTHORITY
May 10, 2012
REGULAR MEETING

The Texas State Railroad Authority Board of Directors met in Palestine with the following board members present: Steve Presley, President; Al Holmes, City of Palestine; Hugh Summers, City of Palestine; Charles Hassell, City of Rusk; Bob Goldsberry, City of Rusk; Marie Whitehead, City of Rusk; others present, Angela Raiborn, Rusk Mayor; Mike Murray, Rusk City Manager; Dave Schranck, AHR; & John Price, TSR Society; Jerry Burford, AHR; Christa Tennison, AHR; & Ed Boeh of TSRR. Cliff Rich, Palestine agent for the TSRR. Numerous others from the press and radio were also present to hear Ed Ellis of the Iowa Pacific Company. Also, Ron Stutes, our attorney was present. Gary Traylor was also present.

CALL TO ORDER

President Steve Presley called the meeting to order in the Palestine City Hall at 9 AM.

APPROVAL OF MINUTES

The board approved the minutes from the meeting of April 12, 2012 by a motion of Charles Hassell and the second from Bob Goldsberry.

BOARD DISCUSSION AND ACTION

- A. Greg Laudadio, accountant with the City of Palestine presented the financial Statement, and it was accepted by a motion of Hugh Summers and a second From Bob Goldsberry. All of the board members agreed to accept it.**
- B. Gary Traylor of Traylor and Associates reported on the grants, but no action Was taken.**
- C. Dave Schranck reported on current events with the AHR, and no action was Taken.**
- D. No action was taken regarding AHR and contract amendements.**
- E. No action was taken regarding partial ownership by AHR.**
- F. No action was taken regarding tracks from Royall Street to the TSR Depot.**
- G. No action was taken after John Price of the TSR Society made his report.**
- H. The motion by Albert Holmes and seconded by Hugh Summers to conditionally approve the concept of the acquisition by Iowa Pacific Holdings,**

L.C.C., or a subsidiary, of the American Heritage Railways of Texas, Inc., subject to performing a due diligence investigation; in addition, to authorize Steve Presley and/or Ron Stutes to sign and submit necessary applications to the Surface Transportation Board. The motion was approved by the board.

I. No action was taken regarding transfer of control of AHR.

J. No action was taken regarding changes of liability by AHH

K. No action was taken regarding changes for AHR control.

L. Action to underwrite up to \$150,000 of the diesel spill was approved with the motion being made by Albert Holmes and seconded by Hugh Summers. The board will still find the correct party to pay for the spill loss before it becomes a greater loss is suffered.

M. See "L" above.

N. The June meeting will take place on June 14 in Rusk.

ADJOURNMENT

President Steve Presley adjourned the meeting at 11:30 AM

ATTEST:

Albert W. Holmes, Secretary

EXHIBIT E

RAILROAD OPERATING CONTRACT
Texas State Railroad
2007

- WHEREAS,** The Texas State Railroad originated in the 19th Century as a freight railroad to serve the East Texas Penitentiary in Rusk, Texas, and was soon extended to Palestine, Texas; and
- WHEREAS,** In 1976, the Texas State Railroad gained a new life as a historical and cultural asset of the Texas Parks and Wildlife Department; and
- WHEREAS,** The Texas State Railroad has operated for 30 years between the Cities of Rusk and Palestine, providing an invaluable historic and cultural resource to the citizens of Cherokee and Anderson Counties, and the citizens of the State of Texas; and
- WHEREAS,** In 2006, the Texas Parks and Wildlife Department announced that it was no longer economically feasible for the State of Texas to operate the Texas State Railroad as an excursion railroad, and planned to convert the operating rail equipment into a static display; and
- WHEREAS,** The Cities of Rusk and Palestine have spearheaded a grassroots effort to transfer control of, and responsibility for, the Texas State Railroad to a local entity; and
- WHEREAS,** The Cities of Rusk and Palestine created the Texas State Railroad Operating Agency to initiate the efforts to ensure continued operations of the Texas State Railroad; and
- WHEREAS,** In order to provide convincing proof to the Texas Legislature that a locally-controlled operating authority can successfully operate the Texas State Railroad, the Texas State Railroad Operating Agency issued a Request for Qualifications that solicited proposals from private entities qualified to operate the Texas State Railroad; and
- WHEREAS,** The 80th Texas Legislature, in Senate Bill 1659, created the Texas State Railroad Authority to receive possession of the Texas State Railroad and continue its operations, including through a private operator; and
- WHEREAS,** American Heritage Railways, Inc. submitted a responsive proposal to operate the Texas State Railroad; and
- WHEREAS,** American Heritage Railways, Inc. will operate in the State of Texas under a subsidiary, American Heritage Railways of Texas, LLC.

NOW, THEREFORE, the Texas State Railroad Authority (the "Authority") and American Heritage Railways of Texas, LLC (the "Railway") hereby agree as follows:

1. In consideration of the promises and representations contained in this Operating Contract (the "Contract"), the Authority hereby leases to the Railway all of the Authority's interest in the Texas State Railroad (the "Railroad").

2. The Railroad includes all real and personal property associated with its current operation. "Railroad Right of Way Property" includes all rights of way, roadbed, and track. "Railroad Real Property" includes all buildings, structures, and other real property, other than rights of way, roadbed, and track, associated with or used in connection with the Railroad, as described in Exhibit "A." "Railroad Personal Property" includes all personal property associated with or used in connection with the Railroad, including locomotives, rolling stock, concession equipment, and otherwise as described in Exhibit "B."

3. The Railway shall purchase, at cost, all inventory on hand for resale such as souvenirs for sale at the gift shop. The Railway shall have until September 1, 2008 to make final payment. The term "cost" shall be defined as the actual invoice cost to the Authority or its predecessors as well as all discounts and rebates on inventory purchased that have been received by the Authority or its predecessor.

4. This Contract does not include, and the Authority shall have no obligation to convey to the Railway, any real or personal property not within its control and identified by this Agreement.

5. a) This Lease of the Railroad is on an "AS IS, WHERE IS" basis.. The Authority makes no warranties (except that the Sublease Agreement shall contain the same warranties from the Authority that it received in Section 10 of the Long Term Lease between the Authority and the Texas Parks and Wildlife Department), either express or implied, as to any matter whatsoever concerning the Railroad, its condition, merchantability, economic viability, the amount of or need for passenger rail traffic, the fitness for any particular purpose, or the ownership of or title to any portion of the Railroad Right of Way Property, Railroad Real Property, or Railroad Personal Property. The Railway has had an opportunity to inspect and examine the Railroad and its books, records, facilities, equipment, and right of way in order to fully inform itself regarding the condition of all the Railroad Right of Way Property, Railroad Real Property, or Railroad Personal Property.

b) The Railway and the Authority acknowledge that Car 43 of the Railroad, part of the Railroad Personal Property, sustained damage in an accident that occurred on or about July 6, 2007. The Railway will be responsible for performing the repairs on the car. In compensation for the damaged equipment, the Authority will reimburse the Railway for the cost of repairing the car, up to \$13,500. The Railway will promptly provide documentation of the cost of repairing the car to the Authority.

new
B
[Signature]

4 6. This Contract shall be for a term of eight years. The initial term shall begin at midnight on September 1, 2007, and will expire at 11:59 p.m. on August 31, 2015, unless earlier terminated in accordance with the provisions of this Contract. The Contract will automatically renew for successive eight-year terms unless Notice of Termination or Notice of Renegotiation is given by either party. If either party intends to terminate the Contract at the end of its term, it shall give Notice of Termination to the other party no less than six months prior to the termination of the contract, in which case the Contract shall terminate by its own terms. If either party gives Notice of Renegotiation to the other party prior to the expiration of the contract, the parties shall work together for no less than three months to come to an agreement on any appropriate amendments to the agreement. If Notice of Renegotiation has been given by either party, the Contract shall not renew for another term until an agreement is reached. The Contract shall, however, be extended until a new agreement is reached, or until a Termination Date set out in a Notice of Termination given by either party. The Notice of Termination shall state a Termination Date no less than six months after the Notice is given. A Notice of Termination may not be given less than three months after a Notice of Renegotiation is given.

7. Railway shall use the Premises:

- a) to operate passenger excursion trains;
- b) to display historic and educational exhibits;
- c) to provide related public services, including but not limited to food and gift concessions;
- d) to operate campgrounds and other park facilities in association with train operations;
- e) to maintain the property, equipment, and facilities so as to preserve and enhance uses (a) through (d);
- f) in a manner consistent with uses (a) through (d), to make the facilities and equipment of the Railroad available for film and video productions;
- g) in a manner consistent with uses (a) through (d), to operate the facilities and equipment of the Railroad to provide freight service;
- h) in a manner consistent with uses (a) through (d), to utilize the premises, facilities and equipment of the Railroad to produce revenue ancillary to the primary use, including but not limited to, such items as hotel operations, development of special use events, and amusement facilities.

4 8. Railway shall pay to the Authority, for the use of the Railroad, including but not limited to the Railroad Real Property and the Railroad Personal Property, either an annual Payment equal to 2% of the Gross Operating Revenue of the Railroad, or the Guaranteed Payment as described in this Paragraph, whichever is greater. The Annual Payment will be payable on or before September 30 of every year, and will be based on the Gross Operating Review received during the previous 12-month period ending August 31. The Guaranteed Payment each year, with the first payment due September 30, 2007, shall be \$100,000; provided, however, that the initial Guaranteed Payment may be delayed until 10 days after the Railway receives funding under Paragraph 18(a)(i) or the loan under Paragraph 18(c).

4X 9. On December 31 of every year, beginning on December 31, 2007, if the number of total riders on the Railroad, including all purchased tickets, special events, and charters, and/or complimentary ridership (hereinafter "Total Ridership") meets or exceeds the Threshold Ridership described in this Paragraph, the Authority shall transfer to the Railway an undivided 12.5% of the ownership interest of Railroad Personal Property and Railroad Real Property (as described in Exhibit's A and B). Since the Railroad has been inoperative for approximately two months, and is still inoperative, the Railway shall be given credit during 2007 for the Railroad's Actual Ridership for the year 2006, in consideration of bringing the Railroad into operation during the year 2007. Provided, however, that this Paragraph shall not apply to such Railroad Personal Property listed in Exhibit C. The Threshold Ridership shall be as follows.

| Year Ending December 31, | Threshold Ridership | Ridership Goal |
|--------------------------|---------------------|----------------|
| 2007 | 60,000 | 70,000 |
| 2008 | 80,000 | 96,000 |
| 2009 | 90,000 | 116,000 |
| 2010 | 96,300 | 119,000 |
| 2011 | 103,041 | 123,000 |
| 2012 | 110,254 | 127,000 |
| 2013 | 117,972 | 130,000 |
| 2014 | 120,000 | 133,900 |

A 10. If the Total Ridership of the Railway in any year is less than the Threshold Ridership, the Authority shall transfer to the Railway an undivided ownership interest in the Railroad Personal Property and Railroad Real Property (as described in Exhibit's A and B) equal to the ratio of the Paid Ridership of the Railway to the Threshold Ridership multiplied by 12.5%.

11. If the Total Ridership of the Railway in any year is adversely affected due to unusual and unforeseeable circumstances beyond the reasonable control of the Railway ("External Events"), the Railway shall be entitled to meet its Threshold Ridership by taking into account the preceding year's Total Ridership during the period of time which the Railroad is adversely affected by the External Events, and the Authority shall transfer the ownership interest in the Railroad Personal Property and Railroad Real Property (as described in Exhibits A and B) as set out in Paragraph 9 on the basis of the adjusted Threshold Ridership, with a maximum annual transfer of 12.5%. The Authority shall grant additional ownership in these circumstances in its discretion. As a guideline, if operations are suspended due to External Events, ownership may be transferred as foreseen by Paragraph 9 with "Total Ridership" recalculated as if the previous year's ridership had occurred while operations were suspended.

A 12. The Railway shall also provide the Authority with an additional \$50,000 per year in the form of Railroad in-kind promotional expenses at the Railways other two operations, guaranteed for five years regardless of whether the Railway continues to operate the Railroad. In addition, the Railway shall guarantee the Authority \$50,000 per

year for in-kind charter train services for existing non-profit fund raising purposes at the Railroad.

13. Transfer of the Railroad Real Property, as set forth in Paragraph 9, will be by way of a deed with substantially the same warranty as the deed under which the Railroad Real Property was received by the Authority from the State. That deed will contain a right of reversion consistent with the provisions of this Agreement.

14. The Authority will lease the Railroad Right of Way Property to the Railway by means of a separate 99-year Sublease Agreement containing the same lease terms as the Authority has from the Texas Parks and Wildlife Department, including all of the same warranties granted therein, which will automatically terminate if this agreement is terminated. Revenue associated with licenses for use of the right of way will be gross revenue of the Railway.

15. The Railway will consent to the annexation, by either the City of Palestine or the City of Rusk, of any Railroad Right of Way Property, any Railroad Real Property, or any real property owned by the Railway adjacent to the Railroad Real Property.

16. Notwithstanding the transfer of partial or complete ownership of Railroad Real Property or Railroad Personal Property, the Railway may not divert Railroad Real Property or Railroad Personal Property from use in conjunction with operations of the Railroad without the consent of the Authority. The Railway may not mortgage or otherwise pledge the Railroad Real Property or Railroad Personal Property it owns without the express written consent of the Authority, which consent shall not be unreasonably withheld. If the Railway proposes to replace any Railroad Personal Property with other equipment ("Replacement Railroad Personal Property"), the Railway hereby agrees that any right of repurchase or reversion in this Contract applicable to the replaced equipment shall be applicable to the Replacement Railroad Personal Property. Upon replacement of equipment that is no longer useful with equipment provided at the cost of the Railway, such replacement will be approved in advance by the Authority with conditions that recognize the investment by the Railway and the responsibility of the Authority to ensure continued operation of the Railroad. The diversion, replacement, mortgage, or pledge of the Railroad Real Property or Railroad Personal Property is also subject to the approval of the TPWD as provided in Senate Bill 1659, 80th Texas Legislature, Regular Session. The Railway may, by mutual agreement between the Railway and the Authority, transfer ownership and control of any portion of the Railroad Real Property or Railroad Personal Property to the Authority, in order to further the purposes of the Authority and the Railway.

17. Ownership of the Rusk Campground (as described in Exhibit D) shall not be transferred to the Railway under the same terms as the rest of the Railroad Real Property. The Railway shall enter into a separate agreement in the form of a lease or a sale and purchase agreement with the City of Rusk which shall provide that the Railway shall have operational control of the Rusk Campground during the term of this

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Agreement. This separate agreement is a requirement of this agreement and will be executed between the City of Rusk and the Railway by September 30, 2007.

18. a) The Railway shall receive the following funding from or through the Authority and the State of Texas:

i) Approximately \$2.3 million in funds received by the TPWD pursuant to the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21), which money is subject to an Advanced Funding Agreement (AFA) between the Texas Department of Transportation and TPWD;

ii) Two million dollars in general revenue funds appropriated by the State Legislature for the purpose of matching TEA-21 funding described in clause (iii) of this subparagraph;

iii) Ten million dollars in funds received by the State of Texas from the federal government pursuant to TEA-21.

b) The Railway shall cooperate with the Authority, and the Authority shall cooperate with the Railway, to efficiently and effectively utilize the funding described in this paragraph. To the extent it is permitted by the state and federal agencies administering this funding, the funding may be used for operational costs. Provided, however, that the Authority shall approve all funding proposals submitted by the Railway before they may be submitted to the administering agency or agencies. The Authority and the Railway understand and agree that the availability to the Railroad of the funding described in this paragraph is a material inducement for the Railway entering into this Contract, and the failure of the Authority to obtain and make the funding available to the Railway, including the loans for operating costs as provided in Subparagraph (c) below, shall be deemed a material breach by the Authority entitling the Railway to terminate this Contract, subject to the notice and cure provisions in Paragraph 46.

c) Upon receipt of the funding described in clause (a)(ii) of this paragraph by the Authority, and not later than September 30, 2007, the Authority shall loan \$500,000 to the Railway as a loan to support operations as needed. In consideration of the provision of the initial \$500,000 loan, the Railway shall execute a promissory note, guaranteed by American Heritage Railways, Inc., payable to the Authority (the "Note"). The Note will not bear interest, and will be payable in 40 equal installments of \$12,500 beginning on September 1, 2011. The initial payment from the Railway to the Authority described in Paragraph 8 may be paid with loan proceeds. Provided, however, that the Note will be forgiven to the extent the Railway uses its own funds to match the funds described in clause (a)(iii), or is permitted to use in-kind contributions to serve as the required match.

d) Although the Railway will attempt to also reimburse the Authority for any of the funds described in clause (a)(ii) used as matching funds so that the Authority has the original amount in clause (a)(ii) at the end of the initial term, any amount used to match funds under clause (a)(iii) is not required to be restored, and the failure to restore funds used to match shall not be considered a breach of this contract.

e) The Railway may request, and the Authority may approve, which approval will not be unreasonably withheld, and subject to the need for availability of funds to match the funding in clause (a)(iii) of this paragraph, an additional loan of up to

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\$500,000 of the funding set out in clause (a)(ii) of this paragraph, under terms to be determined.

f) The Authority will endeavor to obtain necessary approval to use all or part of the remainder of the funding set out in clause (a)(ii) of this paragraph as a direct subsidy to the Railway that can be used as the required match to the funding in clause (a)(iii) of this paragraph, and will cooperate with the Railway to investigate alternative sources of funds to be used to match the funding in clause (a)(iii) of this paragraph.

19. Railway shall be responsible to operate the Railroad for the term of the Contract, at its sole cost, except as described in this agreement. Railway may use subcontractors to operate any portion of the Railroad, provided that a copy of any proposed subcontract will be provided to the Authority, prior to execution if possible.

20. Railway shall be solely responsible for obtaining all necessary approvals from the Federal Railroad Administration, and any other state or federal agency.

21. With the exception of the Railroad Personal Property provided to the Railway by the Authority upon the initiation of the Lease, the Railway shall provide all personal property necessary for the operation of the Railroad.

22. The Authority will not have any operational responsibility for the Railroad. The Authority will act to administer this contract in a manner to further the purposes set out herein. The Authority will also endeavor to access other public and private funding sources to support ongoing capital improvement and rehabilitation efforts.

23. The Railway shall maintain a complete file of all records pertaining to the operation and maintenance of the Railroad, shall make such records fully available to the Authority at any time upon reasonable notice, and subject to the need for such records in order to operate the Railroad. The Railway shall follow generally accepted accounting principles in maintaining its financial records for rail service. The Railway shall submit monthly, quarterly, and annual operating reports, covering the prior applicable period, in accordance with the accounting system established by the Railway. The Railway shall permit the Authority to audit the Railway's records to determine if monthly and annual reports accurately reflect the operations being conducted, and to assess the financial condition of the Railway with regard to its operation of the railroad. For the period September 1, 2007 through January 31, 2008, monthly summary reports will be provided. Beginning February 1, 2008, periodic reports will be submitted:

a) For monthly and quarterly reports, no later than 15 days following the end of the previous period;

b) For annual reports, no later than 45 days following the end of the previous period.

24. The Railway shall submit to the Authority an Initial Capital Improvement and Rehabilitation Plan ("ICIRP") setting forth the necessary improvements and additions to the capital facilities of the Railroad. The ICIRP will be submitted to the

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Authority no later than June 30, 2008. The ICIRP shall consist of projects that can be funded by the federal grant money described in Paragraph 18(a)(ii) and 18(a)(iii), and shall be in a format sufficient to form the basis of the submissions required to obtain grant funding. The Authority will provide funding for the ICIRP as funds are available pursuant to Paragraph 18(a)(ii) and 18(a)(iii) of this Agreement. After completion of the ICIRP, the Railway will be responsible for maintenance of the facilities and equipment of the Railroad so as to maintain at least a Class 2 safety/speed rating. To that end, the Railway shall submit to the Authority an Annual Capital Improvement and Rehabilitation Plan each year during the month of January, beginning in January 2009. Although the Railway will be expected to fund necessary upkeep and repairs after the completion of the ICIRP, the Authority will attempt to locate and secure other sources of funding for such efforts as set forth in Paragraph 22.

25. The Railway will, in addition to the Capital Improvement and Rehabilitation Plans, perform regular maintenance so as to keep the Railroad in a safe condition, in good repair, in an attractive condition, and in compliance with all applicable state and federal regulatory requirements.

a) The Railway will submit to the Authority an Annual Maintenance Plan on or before December 1 for the following calendar year. The Railway will perform maintenance in accordance with that schedule. The Annual Maintenance Plan shall be sufficient to

i) ensure that buildings and facilities (including rolling stock used for display purposes only) are maintained in a safe, clean, and attractive condition;

ii) ensure that locomotives and rolling stock (other than that used for display purposes only) are maintained in a safe, attractive, and historically accurate fashion, and in compliance with state and federal safety regulations; and

iii) adequately control vegetation along the right of way.

b) Capital improvements are defined as major expenditures required for bridges and other structures, tie replacement beyond normalized maintenance, the cost of new rolling stock, and the cost of major rehabilitation of rolling stock. The costs for normal replacement of railroad ties, locomotive boiler flues, flue sheets, and rebuilding running gear shall not be a capital expenditure.

c) The Capital Improvement and Rehabilitation Plan will include a tie replacement plan. After completion of the tie replacement portion of the Capital Improvement and Rehabilitation Plan, the Annual Maintenance Plan will include a regular tie replacement component which will replace an average of no less than 2,500 ties each year (with mainline-quality new ties having not less than 30 years remaining life).

d) The Railway must provide, on an annual basis, a report of the total number of remaining FRA tube days for each steam locomotive operated (whether owned by the Railway or the Authority), and a forecast of the intended days under pressure for the next annual season that will be deducted from these remaining tube days. If the locomotive will expire due to 15-year calendar expiration rather than boiler days used, it must be directly noted on the report. The

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Railway will provide copies to the Authority of any waivers, extensions, out-of-service notices, or other required locomotive correspondence normally required by the FRA that directly affects the predicted regular operations or extended (during operating season) overhaul of steam locomotives operated on the Railroad.

e) The Railway acknowledges that there have been recent damages to the railroad right-of-way caused by extraordinary rainfall during the Spring and Summer of 2007. The Railway will repair these damages. The Authority will pay up to \$631,732 the Railway's costs of repairing the damages on a force account basis. Up to \$100,000 of the Railway's costs may be paid in advance upon request of the Railway; otherwise, the Railway will submit proof of the actual cost of materials used and the identity and pay rate of employees used to perform the repairs, and will be reimbursed on a cost plus 17% basis to reflect the overhead and administrative expense to the Railway. To the extent that the Railway is required to contract with third parties to perform parts of the repairs, the amount paid to such third parties will be reimbursed on a cost plus 10% basis. To the extent the Railway's costs exceed \$631,732, the parties agree to cooperate to seek additional funding from the State of Texas to completely reimburse those costs.

26. The Authority reserves the right to inspect the Railroad for the purpose of determining the Railway's compliance with this Contract. Upon request, the Railroad agrees to provide a suitable rail inspection vehicle and a qualified operator to take the authorized representatives of the Authority on such an inspection, provided that the inspection shall not interfere with the operation of the Railway.

27. The Railway shall obtain insurance from a responsible insurance company licensed to do insurance business in the State of Texas. The insurance shall show the Authority, the City of Palestine, and the City of Rusk as additional insureds to the extent provided for below, and shall contain a provision against cancellation by the carrier without 60 days' notice to the Railway and to the Authority. The Railway shall provide copies of certificates of insurance to the Authority and maintain that insurance in force and effect at all times during the term of this Contract. The insurance required is as follows:

a) general public liability insurance for personal injury and property damage resulting from operation of the Railroad, including all associated activities including the operation of campgrounds, historical exhibits, museums, and any other recreational, cultural, or historical facilities, in the amount of \$5,000,000 (with a retention of no greater than \$100,000), with the Authority, the City of Palestine, and the City of Rusk as additional insureds to the extent of their respective insurable interests;

b) property casualty insurance for the buildings, structures, locomotives, rolling stock, tools, and equipment of the Railroad, with the Authority as an additional insured;

c) workers' compensation insurance as provided by Texas law.

d) on the policies of all insurance maintained to meet the requirements of this Paragraph.

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28. The Railway will indemnify, defend, and hold harmless the Authority, the City of Palestine, and the City of Rusk from all claims arising out of the operation by the Railway of the Railroad. The Railway will also save harmless the Authority from all mechanic's, contractor's, and materialman's liens on any improvement to the Railroad.

29. The Railway will be responsible for all federal, state, or local income, sales, or ad valorem property taxes. If title to any Railroad Personal Property or Railroad Real Property is transferred to the Railway pursuant to this Contract or any amendment to this Contract, the Railway agrees and acknowledges that it will become liable for any applicable ad valorem taxes for which the property may have been exempt when held by the State of Texas, a local government, or the Authority. The Railway agrees to collect and remit all applicable sales and use taxes on taxable sales of goods and services at the Railroad.

30. The Railway will be responsible for arranging for and paying for all water, gas, electrical, wastewater, or other utility services to the Railroad.

31. The Railway will endeavor to offer continued employment to all employees of the State of Texas Parks and Wildlife Department currently working at the Texas State Railroad.

32. The Railway will not discriminate because of race, color, religion, gender, or national origin, against any person, or refuse to furnish such person any accommodation, facility, service, or privilege offered to, or enjoyed by, the general public. Further, the Railway shall not publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of that person's race, color, religion, gender, or national origin. The Railway will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, or because the employee or applicant is over 40 years of age, and will include a statement of non-discrimination in all advertisements or solicitations for employees.

33. The Railway shall establish a coordinated sales and reservations operation. Although the Railway may provide such services in conjunction with its operations in other states, such coordination shall be transparent to the customer. Telephone reservations and purchases shall be toll-free from the Palestine and Rusk areas. Ticket purchases shall be available on site at both depots during normal operating hours, either through Railway personnel or independent contractors operating concessions at the depot.

34. The Railway shall have a license to use the "Texas State Railroad" name and any logo created in association with the name. Any logo, trademark, or other marketing device created by the Railway in connection with the Railroad will be the property of the Authority. The Authority, the City of Rusk, and the City of Palestine may also use the name "Texas State Railroad" and any logo, including any logo or trademark created by the Railway. The Authority, the City of Rusk, and the City of Palestine may

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not, however, permit the use of any trademark or the Texas State Railroad name by any third person without the consent of the Railway. The Authority and the Railway will enter into a separate, long-term license agreement permitting the Railway to use the "Texas State Railroad" name and any trademarks associated therewith, provided that the long-term license agreement will terminate upon the termination of this Agreement. Registered website URL names specifically involving the Texas State Railroad name shall also be transferred to the Authority upon termination of this Agreement.

35. In order to promote the cultural, recreational, and historic resource represented by the Railroad, the Railway will engage in a coordinated, professional marketing effort to increase awareness of the Railroad, increase ridership, and increase profitability. The marketing will also be available to promote local businesses and attractions in Anderson and Cherokee Counties. Marketing materials shall be developed in consultation with the Authority, and a full report on the marketing effort, including samples of advertising, shall be made to the Authority as part of the quarterly reports in Paragraph 23.

36. Rates and schedules shall be developed by the Railway and submitted to the Authority. The Railway shall originate round trips from both Rusk and Palestine, and shall endeavor to originate substantially the same number of trips from each city. Changes in the rates and schedules shall be immediately reported to the Authority.

37. The Railway will endeavor to schedule special events, including special holiday events and events in conjunction with licensed characters and promotions (such as Peanuts or Polar Express). To the extent that the license for such events is held by an affiliate of the Railway, the licensing fees and contractual arrangements for such events at the Railroad will be no less favorable to the Railway than those offered to other excursion railroads. The Railway will work with existing community groups that have historically used events on the Railroad for fundraising purposes so that substantially equivalent opportunities for fundraising continue.

38. The Railway will endeavor to work with film production companies, television production companies, and advertising agencies to encourage the use of the Railroad's facilities in connection with such productions. The Railway will report periodically to the Authority regarding its efforts in this regard.

39. A designated representative of the Railway will attend all meetings of the Authority and act as liaison with the Authority. The Railway will provide the name and contact information of the designated liaison to the Authority. The Authority and the Railway will maintain a close working relationship.

40. The Railway will have an emergency plan in the event of a natural disaster, terrorist attack, fire, environmental accident, or other emergency. The Railway will provide a copy of the current emergency plan to the Authority. The Railway will ensure that such a plan complies with government requirements to protect operations, track, bridges, and rolling stock. The Railway will present a written safety plan which

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includes fire suppression practices no later than February 1, 2008, and will provide a copy of any safety-related report provided to the FRA regarding incidents or accidents on the Railroad.

41. The Railway hereby expressly agrees that before it may bring any cause of action against the Authority, the City of Palestine, or the City of Rusk, it will first present such claim in writing to the governing board of the Authority, or the appropriate City Council. If the Railway is dissatisfied with the response of the Authority or the appropriate City, it may request mediation of the dispute. The Railway may not commence litigation of any claim until 60 days after the demand of mediation is made.

42. Any assignment of this Contract by either Party must be with the consent of the other party, which consent will not be unreasonably withheld, and such assignment must be expressly accepted in writing by the Party to which the Contract is assigned.

43. [This Paragraph is intentionally left blank.]

44. The Railway acknowledges that the funding by the State of Texas described in Paragraph 18 constitutes compliance with the condition in the original agreement that the State provide at least \$12,000,000 to the Agency; provided, however, that if the Railway provides the ICIRP by June 30, 2008 but the State does not make available at least \$12,000,000 to the Authority through an Advance Funding Agreement by December 31, 2008, the Authority shall notify the Railway, and the Railway may terminate this Contract, subject to the notice and cure provisions in Paragraph 46.

45. Either Party may terminate this Contract for a material breach of its terms by the other Party, subject to the opportunity to cure as set out in Paragraph 46.

46. Upon determination by a Party that the other Party has materially breached the Contract, the Non-breaching Party shall provide written notice to the Breaching Party of the breach. The Breaching Party shall have 120 days to cure the breach, or a longer time with approval of the Non-breaching Party, which approval shall not be unreasonably withheld, before the Non-breaching Party may terminate the Contract as provided in Paragraphs 18(b), 44 and 47. If the Non-breaching Party determines that the breach has not been cured the Agreement shall be terminated. Upon termination of this Agreement, the Railway shall conclude operations within 45 days, and if the termination is for a breach defined in Paragraph 47, transfer any property acquired under Paragraph 9 or Paragraph 17 to the Authority for consideration of \$100, and transfer control of the Railroad to the Authority or its designee.

47. The following shall constitute material breach of this Contract by the Railway, subject to the notice and cure provisions in Paragraph 46:

- a) Failure to make the payments required by Paragraph 8;
- b) Failure to operate at least four round trip schedules per week, with capacity for at least 200 passengers per trip during the months of March through September. At least two round trip trains per week during the March – September

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period shall be operated with steam locomotive power. (Provided that if these requirements are temporarily not met due to mechanical failures, weather conditions, or other circumstances beyond the reasonable control of the Railway, such temporary disruption will not be considered a material breach so long as prompt action by the Railway is undertaken to remedy the disruption);

- c) Failure to operate in compliance with state or federal regulations;
- d) The application for, or consent to, the appointment of a receiver, trustee, or liquidator of the Railway or a substantial part of its assets, the filing of a petition for voluntary bankruptcy, the general assignment of assets for the benefit of creditors, or the filing of an answer admitting the material allegations of a petition filed against the Railway in a bankruptcy, reorganization, or insolvency proceeding;
- e) Subject to the provisions of Paragraph 48, failure to provide routine maintenance of the Railroad Real Property and the Railroad Personal Property;
- f) Failure to maintain the insurance required by Paragraph 27;
- g) Subject to the provisions of Paragraph 48, failure to make necessary repairs to correct mechanical breakdowns within a reasonable amount of time;
- h) Making a material misstatement of fact in the proposal to operate the Railroad, or in the negotiation of this Contract;
- i) Failure to perform any action required by this Contract;
- j) Taking any action prohibited by this Contract;
- k) Failure to pay any taxes or assessments relating to the Railroad when due; or
- l) Default under the terms of the promissory note described in Paragraph 18.

48. Before notice of breach with regard to subparagraphs (e) and (g) of Paragraph 47 shall be deemed to be given under Paragraph 46, the Authority shall designate no fewer than three independent consultants to render an opinion whether the Railway has failed to adequately perform maintenance of Railroad Property or correct mechanical breakdowns of equipment. The Railway shall, within three business days of being provided the list of three independent consultants, choose which consultant shall make the determination. The Authority and the Railway will share equally in the cost of the consultant's report. If the consultant concludes that the Railway has breached its duties under subparagraph (e) or (g), provision of the report to the Railway shall constitute notice under Paragraph 46, and the cure period in that Paragraph shall then commence.

49. This document contains the entire understanding between the Parties. With the exception of the Railroad Right-of-Way Lease Agreement, , the Promissory Note provided in Paragraph 18, and any agreement reached between the City of Rusk and the Railway under Paragraph 17, there are no understandings, representations, or warranties not set forth or expressly incorporated by reference in this document. The Parties are represented by counsel, and have had the opportunity to read and analyze the provisions

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herein. The Parties are not relying on representation by the other party regarding the facts underlying this agreement, or the legal effect of its provisions. This Contract may not be orally modified, changed, or discharged.

50. The failure by either party to insist upon strict performance of any of the terms, conditions, and agreements contained in this Contract shall not be construed a waiver of any right or remedy that the Authority has, and shall not be construed as a waiver of any subsequent breach or default.

51. The Railway shall be an independent contractor of the Authority, and the Railway is not required, to the extent permitted by law, to meet state law requirements for competitive bidding that apply to municipalities, political subdivisions, or state agencies.

52. This Contract shall be construed under the laws of the State of Texas. Venue of any cause of action arising under this Contract or the operations covered by the Contract shall be exclusively in either Anderson or Cherokee County, Texas.

53. If any provision of this Contract shall be found invalid, the remainder of the Contract shall remain valid if it is possible to fulfill the purposes of the Contract in the absence of the invalidated provision.

54. Notice required by this Contract shall be given as follows:

If to the Authority:

Dale Brown, City Manager
c/o City of Palestine
504 N. Queen Street
Palestine, Texas 75801

If to the Railway:

Jeffrey D. Jackson, Sr. VP/COO
c/o American Heritage Railways
479 Main Avenue
Durango, Co 81301

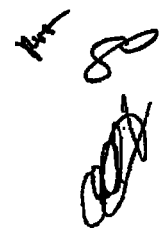
Notice of a change in the person or address as provided herein shall be given as required by this Paragraph.

55. [This Paragraph is intentionally left blank.]

56. [This Paragraph is intentionally left blank.]

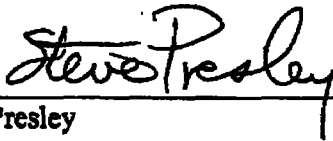
57. If the additional agreements referred to in Paragraph 49 are not executed prior to September 30, 2007, the Railway may terminate this Agreement.

58. If there are extraordinary capital expenses associated with the Railroad Right-of-Way Property, the Railroad Real Property, or the Railroad Personal Property, which has not been disclosed to the Railway, and which failure to disclose is not reasonable, the Railway may terminate this Agreement within 90 days of discovery of those extraordinary expenses.



59. This Agreement is an amendment to the Agreement dated April 2, 2007 between the Texas State Railroad Operating Agency and American Heritage Railways, Inc. (the "Previous Agreement"), and is intended to be a continuation of that Previous Agreement. All obligations and rights arising under the Previous Agreement are assigned by the Texas State Railroad Operating Agency to the Authority, and by American Heritage Railways, Inc. to American Heritage Railways of Texas, LLC.

APPROVED BY THE BOARD OF THE TEXAS STATE RAILROAD AUTHORITY
ON AUGUST 31, 2007.

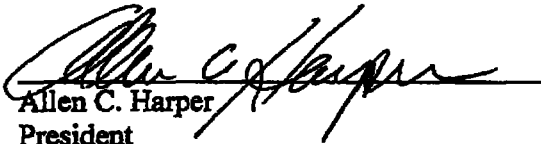


Steve Presley
President



Bob Goldsberry
Vice President

ON BEHALF OF AMERICAN HERITAGE RAILWAYS OF TEXAS, LLC.



Allen C. Harper
President



**AMENDMENT TO
RAILROAD OPERATING CONTRACT
Texas State Railroad
2007**

WHEREAS, An agreement between American Heritage Railways of Texas, LLC and the Texas State Railroad Authority was executed on August 31, 2007; and

WHEREAS, The agreement provided for funding from the State of Texas, but a crucial portion of that funding was contingent on approval of the Legislative Budget Board; and

WHEREAS, Approval of the Legislative Budget Board has not been forthcoming due to concerns regarding some provisions of the August 31, 2007 agreement; and

WHEREAS, It is the desire of the parties to that agreement to alleviate those concerns, if possible; and

WHEREAS, In order to alleviate those concerns, the parties have agreed to this amendment to the August 31, 2007 agreement (the "Amendment").

NOW, THEREFORE, the Texas State Railroad Authority (the "Authority") and American Heritage Railways of Texas, LLC (the "Railway") hereby agree as follows:

1. This Amendment is an amendment to the August 31, 2007 agreement between the Authority and the Railway ("Original Agreement"). Except as provided in this Amendment the Original Agreement remains in effect.

2. The Railway's approval of this Amendment is not effective unless and until the Legislative Budget Board grants its approval as provided in Article IX, Section 19.81(f) of the General Appropriations Act, House Bill 1, 80th Legislature.

3. Paragraph 18 of the Agreement is amended to read as follows:

18. a) The Railway shall receive the following funding from or through the Authority and the State of Texas:

i) Approximately \$2.3 million in funds received by the TPWD pursuant to the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21), which money is subject to an Advanced Funding Agreement (AFA) between the Texas Department of Transportation and TPWD, and which amended Advance Funding Agreement will be in place no later than 90 days following the execution of this Amended Agreement;



ii) Two million dollars in general revenue funds appropriated by the State Legislature for the purpose of matching TEA-21 funding described in clause (iii) of this subparagraph;

iii) Ten million dollars in funds received by the State of Texas from the federal government pursuant to TEA-21; and

iv) One million dollars in the form of a line of credit as described in Subparagraph (e).

b) The Railway shall cooperate with the Authority, and the Authority shall cooperate with the Railway, to efficiently and effectively utilize the funding described in this paragraph. The Authority shall approve all funding proposals submitted by the Railway before they may be submitted to the administering agency or agencies. The Authority and the Railway understand and agree that the availability to the Railroad of the funding described in this paragraph is a material inducement for the Railway entering into this Contract, and the failure of the Authority to obtain and make the funding available to the Railway shall be deemed a material breach by the Authority entitling the Railway to terminate this Contract, subject to the notice and cure provisions in Paragraph 46.

c) The funding provided in clause (a)(ii) of this paragraph shall be used solely for capital improvements and rehabilitation of facilities and equipment of the Railroad, and for grant administration and other costs directly related to such capital improvements and rehabilitation. The funding shall not be used for any general operating costs of the Railway. The funding provided in clause (a)(ii) of this paragraph may only be expended in accordance with the Advance Funding Agreement that will be applicable to the grant funding described in clause (a)(iii) of this paragraph.

d) Any change in the use of funds provided in clauses (a)(ii) or (a)(iii) of this paragraph shall be ineffective unless approved in advance, in writing, by the Legislative Budget Board.

e) The Authority will provide quarterly reports of the expenditure of the funds provided pursuant to (a)(ii) to the Legislative Budget Board.

f) The Authority will make available a line of credit, to be funded from sources other than those described in Clauses (a)(i), (a)(ii), and (a)(3) of this Paragraph, in the amount of \$1,000,000 to support operations as needed. In consideration of the provision of the line of credit, the Railway shall execute a promissory note, guaranteed by American Heritage Railways, Inc., payable to the Authority, in the form set out in the attachment (the "Note"). The Railway may not draw on the line of credit after September 1, 2011. The Note will not bear interest, and will be payable in 40 equal installments beginning on September 1, 2011. The initial payment from the Railway to the Authority described in Paragraph 8 may be paid with loan proceeds.

g) If funding is procured from some other source that may be used more feasibly than the other sources listed in this

subparagraph, that funding source may be substituted with the consent of the Authority and the Railway, which consent will not be unreasonably withheld.

4. Section 24 of the Agreement is amended to read as follows:

24. The Railway shall submit to the Authority an Initial Capital Improvement and Rehabilitation Plan ("ICIRP") setting forth the necessary improvements and additions to the capital facilities of the Railroad. The ICIRP will be submitted to the Authority no later than June 30, 2008. The ICIRP shall consist of projects that can be funded by the federal grant money and the state matching money described in Paragraph 18(a)(ii) and 18(a)(iii), and shall be in a format sufficient to form the basis of the submissions required to obtain grant funding. The Authority will provide funding for the ICIRP as funds are available pursuant to Paragraph 18(a)(ii) and 18(a)(iii) of this Agreement. After completion of the ICIRP, the Railway will be responsible for maintenance of the facilities and equipment of the Railroad so as to maintain at least a Class 2 safety/speed rating. To that end, the Railway shall submit to the Authority an Annual Capital Improvement and Rehabilitation Plan each year during the month of January, beginning in January 2009. Although the Railway will be expected to fund necessary upkeep and repairs after the completion of the ICIRP, the Authority will attempt to locate and secure other sources of funding for such efforts as set forth in Paragraph 22.

5. Section 44 of the Original Agreement is amended to read as follows:

44. The Railway acknowledges that the funding by the State of Texas described in Paragraph 18 constitutes compliance with the condition in the original agreement that the State provide at least \$12,000,000 to the Agency; provided, however, that if the Railway provides the ICIRP by June 30, 2008 but the State does not make available at least \$12,000,000 to the Authority through an Advance Funding Agreement by December 31, 2008, the Authority shall notify the Railway, and the Railway may terminate this Contract, subject to the notice and cure provisions in Paragraph 46. For the purposes of this Paragraph, the funding is "made available" if the Advance Funding Agreement for the \$10,000,000 in Transportation Enhancement funds is in place, notwithstanding the fact that some or all of the reimbursement available may be requested or received after December 31, 2008.

6. Section 49 of the Original Agreement is amended to read as follows:

49. The entire understanding of the Parties is included in the Original Agreement, the Amendment to the Agreement, the Railroad Right of Way Lease Agreement, and the Purchase and Sale Agreement



between the City of Rusk and the Railway reached pursuant to Paragraph 17. The Parties are represented by counsel, and have had the opportunity to read and analyze the provisions herein. The Parties are not relying on representation by the other party regarding the facts underlying this agreement, or the legal effect of its provisions. This Contract may not be orally modified, changed, or discharged.

7. Section 46 of the Original Agreement is amended to read as follows:

46. Upon determination by a Party that the other Party has materially breached the Contract, the Non-breaching Party shall provide written notice to the Breaching Party of the breach. The Breaching Party shall have 120 days to cure the breach, or a longer time with approval of the Non-breaching Party, which approval shall not be unreasonably withheld, before the Non-breaching Party may terminate the Contract as provided in Paragraphs 18(b), 44 and 47. If the Non-breaching Party determines that the breach has not been cured the Agreement shall be terminated. Upon termination of this Agreement, the Railway shall conclude operations within 45 days, and if the termination is for a breach defined in Paragraph 47, transfer any property acquired under Paragraph 9 or Paragraph 17 to the Authority for consideration of \$100, and transfer control of the Railroad to the Authority or its designee. Upon termination of this Agreement for any reason other than termination for a breach defined in Paragraph 47, the Railway shall immediately offer to convey all ownership of all property it has acquired under Paragraph 9 or Paragraph 17 to the Authority at Fair Market Value. If the parties are unable to agree on a Fair Market Value, Fair Market Value shall be determined by Stone Consulting & Design, Inc. ("Stone"). If Stone is unable or unwilling to determine the Fair Market Value, the parties shall agree on an appraiser. If the parties are unable to agree on an appraiser, each party shall select an appraiser. Those two appraisers shall select a third appraiser. The three appraisers shall determine Fair Market Value. Cost of the appraisal shall be divided equally between the Authority and the Railway; provided, however, that the Railway shall bear the initial cost and may be reimbursed for one-half of the cost when paid for the property.

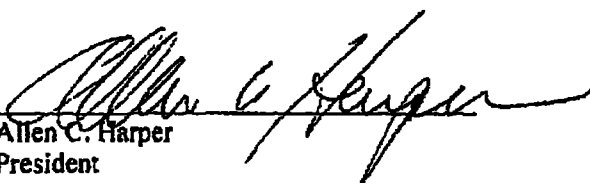
APPROVED BY THE BOARD OF THE TEXAS STATE RAILROAD AUTHORITY
ON NOVEMBER __, 2007.

Steve Presley
President

Bob Goldsberry
Vice President




ON BEHALF OF AMERICAN HERITAGE RAILWAYS OF TEXAS, LLC.


Allen C. Harper
President

VERIFICATION

STATE OF)
)
CITY OF) SS

Kevin W. Busath, being duly sworn according to law, hereby deposes and states that (s)he is holds the position of vice president – strategic planning with applicant/petitioner (respondent), is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true an accurate as stated, to the best of (her) his knowledge, information, and belief.


Subscribed to and sworn to before me, a Notary Public, in and for the City of Chicago in the State of IL, this 30 day of August 2012


Notary Public

My commission expires: Jan 13, 2013

